

SSB 6349 - H COMM AMD

By Committee on Commerce & Labor

ADOPTED AS AMENDED 3/03/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. Sec. 1. A new section is added to chapter 49.12 RCW
4 to read as follows:

5 (1) The director shall establish a farm internship pilot project
6 until December 1, 2011, for the employment of farm interns on small
7 farms under special certificates at wages, if any, as authorized by
8 the department and subject to such limitations as to time, number,
9 proportion, and length of service as provided in this section and as
10 prescribed by the department. The pilot project shall consist of two
11 counties, one a county consisting entirely of islands with fewer than
12 fifty thousand residents and one a county that is bordered by the
13 crest of the Cascade mountain range and salt waters with fewer than
14 one hundred fifty thousand residents.

15 (2) A small farm may employ no more than three interns per year
16 under this section.

17 (3) A small farm must apply for a special certificate on a form
18 made available by the director. The application must set forth: the
19 name of the farm and a description of the farm seeking the
20 certificate; the type of work to be performed by a farm intern; a
21 description of the internship program; the period of time for which
22 the certificate is sought and the duration of an internship; the
23 number of farm interns for which a special certificate is sought; the
24 wages, if any, that will be paid to the farm intern; any room and
25 board, stipends, and other remuneration the farm will provide to a
26 farm intern; and the total number of workers employed by the farm.

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1 (4) Upon receipt of an application, the department shall review
2 the application and issue a special certificate to the requesting farm
3 within fifteen days if the department finds that:

4 (a) The farm qualifies as a small farm;

5 (b) There have been no serious violations of chapter 49.46 RCW
6 or Title 51 RCW that provide reasonable grounds to believe that the
7 terms of an internship agreement may not be complied with;

8 (c) The issuance of a certificate will not create unfair
9 competitive labor cost advantages nor have the effect of impairing or
10 depressing wage or working standards established for experienced
11 workers for work of a like or comparable character in the industry or
12 occupation at which the intern is to be employed;

13 (d) A farm intern will not displace an experienced worker; and

14 (e) The farm demonstrates that the interns will perform work for
15 the farm under an internship program that: (i) Provides a curriculum
16 of learning modules and supervised participation in farm work
17 activities designed to teach farm interns about farming practices and
18 farm enterprises; (ii) is based on the bona fide curriculum of an
19 educational or vocational institution; and (iii) is reasonably
20 designed to provide the intern with vocational knowledge and skills
21 about farming practices and enterprises. In assessing an internship
22 program, the department may consult with relevant college and
23 university departments and extension programs and state and local
24 government agencies involved in the regulation or development of
25 agriculture.

26 (4) A special certificate issued under this section must specify
27 the terms and conditions under which it is issued, including: The
28 name of the farm; the duration of the special certificate allowing the
29 employment of farm interns and the duration of an internship; the
30 total number of interns authorized under the special certificate; the
31 authorized wage rate, if any; and any room and board, stipends, and
32 other remuneration the farm will provide to the farm intern. A farm
33 worker may be paid at wages specified in the certificate only during
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1 the effective period of the certificate and for the duration of the
2 internship.

3 (5) If the department denies an application for a special
4 certificate, notice of denial must be mailed to the farm. The farm
5 listed on the application may, within fifteen days after notice of
6 such action has been mailed, file with the director a petition for
7 review of the denial, setting forth grounds for seeking such a review.
8 If reasonable grounds exist, the director or the director's authorized
9 representative may grant such a review and, to the extent deemed
10 appropriate, afford all interested persons an opportunity to be heard
11 on such review.

12 (6) Before employing a farm intern, a farm must submit a statement
13 on a form made available by the director stating that the farm
14 understands: The requirements of the industrial welfare act, chapter
15 49.12 RCW, that apply to farm interns; that the farm must pay workers'
16 compensation premiums in the assigned intern risk class and must pay
17 workers' compensation premiums for non-intern work hours in the
18 applicable risk class; and that if the farm does not comply with
19 subsection (7) of this section, the director may revoke the special
20 certificate.

21 (7) The director may revoke a special certificate issued under
22 this section if a farm fails to: Comply with the requirements of the
23 industrial welfare act, chapter 49.12 RCW, that apply to farm interns;
24 pay workers' compensation premiums in the assigned intern risk class;
25 or pay workers' compensation premiums in the applicable risk class for
26 non-intern work hours.

27 (8) Before the start of a farm internship, the farm and the intern
28 must sign a written agreement and send a copy of the agreement to the
29 department. The written agreement must, at a minimum:

30 (a) Describe the internship program offered by the farm, including
31 the skills and objectives the program is designed to teach and the
32 manner in which those skills and objectives will be taught;

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1 (b) Explicitly state that the intern is not entitled to minimum
2 wages for work and activities conducted pursuant to the internship
3 program for the duration of the internship;

4 (c) Describe the responsibilities, expectations, and obligations
5 of the intern and the farm, including the anticipated number of hours
6 of farm activities to be performed by the intern per week;

7 (d) Describe the activities of the farm and the type of work to be
8 performed by the farm intern; and

9 (e) Describes any wages, room and board, stipends, and other
10 remuneration the farm will provide to the farm intern.

11 (9) The definitions in this subsection apply throughout this
12 section unless the context clearly requires otherwise.

13 (a) "Farm intern" means an individual who provides services to a
14 small farm under a written agreement and primarily as a means of
15 learning about farming practices and farm enterprises.

16 (b) "Farm internship program" means an internship program
17 described under subsection (2)(d) of this section.

18 (c) "Small farm" means a farm:

19 (i) Organized as a sole proprietorship, partnership, or
20 corporation;

21 (ii) That reports on the applicant's schedule F of form 1040 or
22 other applicable form filed with the United States internal revenue
23 service annual sales less than two hundred fifty thousand dollars; and

24 (iii) Where all the owners or partners of the farm provide regular
25 labor to and participate in the management of the farm, and own or
26 lease the productive assets of the farm.

27 (10) A farm intern employed under such a certificate may be paid
28 at the wage rate specified in the certificate only during the
29 effective period of the certificate.

30 (11) The department shall monitor and evaluate the farm
31 internships authorized by this section and report to the appropriate
32 committees of the legislature by December 31, 2011. The report shall
33 include, but not be limited to: the number of small farms that applied
34 for and received special certificates; the number of interns employed

1 as farm interns; the nature of the educational activities provided to
2 the farm interns; the wages and other remuneration paid to farm
3 interns; the number of and type of workers' compensation claims for
4 farm interns; the employment of farm interns following farm
5 internships; and other matters relevant to assessing farm internships
6 authorized in this section.

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8 **Sec. 2.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to
9 read as follows:

10 As used in this chapter:

11 (1) "Director" means the director of labor and industries;

12 (2) "Wage" means compensation due to an employee by reason of
13 employment, payable in legal tender of the United States or checks on
14 banks convertible into cash on demand at full face value, subject to
15 such deductions, charges, or allowances as may be permitted by rules
16 of the director;

17 (3) "Employ" includes to permit to work;

18 (4) "Employer" includes any individual, partnership, association,
19 corporation, business trust, or any person or group of persons acting
20 directly or indirectly in the interest of an employer in relation to
21 an employee;

22 (5) "Employee" includes any individual employed by an employer but
23 shall not include:

24 (a) Any individual (i) employed as a hand harvest laborer and paid
25 on a piece rate basis in an operation which has been, and is generally
26 and customarily recognized as having been, paid on a piece rate basis
27 in the region of employment; (ii) who commutes daily from his or her
28 permanent residence to the farm on which he or she is employed; and
29 (iii) who has been employed in agriculture less than thirteen weeks
30 during the preceding calendar year;

31 (b) Any individual employed in casual labor in or about a private
32 home, unless performed in the course of the employer's trade,
33 business, or profession;

1 (c) Any individual employed in a bona fide executive,
2 administrative, or professional capacity or in the capacity of outside
3 salesman as those terms are defined and delimited by rules of the
4 director. However, those terms shall be defined and delimited by the
5 director of personnel pursuant to chapter 41.06 RCW for employees
6 employed under the director of personnel's jurisdiction;

7 (d) Any individual engaged in the activities of an educational,
8 charitable, religious, state or local governmental body or agency, or
9 nonprofit organization where the employer-employee relationship does
10 not in fact exist or where the services are rendered to such
11 organizations gratuitously. If the individual receives reimbursement
12 in lieu of compensation for normally incurred out-of-pocket expenses
13 or receives a nominal amount of compensation per unit of voluntary
14 service rendered, an employer-employee relationship is deemed not to
15 exist for the purpose of this section or for purposes of membership or
16 qualification in any state, local government or publicly supported
17 retirement system other than that provided under chapter 41.24 RCW;

18 (e) Any individual employed full time by any state or local
19 governmental body or agency who provides voluntary services but only
20 with regard to the provision of the voluntary services. The voluntary
21 services and any compensation therefor shall not affect or add to
22 qualification, entitlement or benefit rights under any state, local
23 government, or publicly supported retirement system other than that
24 provided under chapter 41.24 RCW;

25 (f) Any newspaper vendor or carrier;

26 (g) Any carrier subject to regulation by Part 1 of the Interstate
27 Commerce Act;

28 (h) Any individual engaged in forest protection and fire
29 prevention activities;

30 (i) Any individual employed by any charitable institution charged
31 with child care responsibilities engaged primarily in the development
32 of character or citizenship or promoting health or physical fitness or
33 providing or sponsoring recreational opportunities or facilities for
34 young people or members of the armed forces of the United States;

1 (j) Any individual whose duties require that he or she reside or
2 sleep at the place of his or her employment or who otherwise spends a
3 substantial portion of his or her work time subject to call, and not
4 engaged in the performance of active duties;

5 (k) Any resident, inmate, or patient of a state, county, or
6 municipal correctional, detention, treatment or rehabilitative
7 institution;

8 (l) Any individual who holds a public elective or appointive
9 office of the state, any county, city, town, municipal corporation or
10 quasi municipal corporation, political subdivision, or any
11 instrumentality thereof, or any employee of the state legislature;

12 (m) All vessel operating crews of the Washington state ferries
13 operated by the department of transportation;

14 (n) Any individual employed as a seaman on a vessel other than an
15 American vessel;

16 (o) Any farm intern providing his or her services to a small farm
17 which has a special certificate issued under section 1 of this act;

18 (6) "Occupation" means any occupation, service, trade, business,
19 industry, or branch or group of industries or employment or class of
20 employment in which employees are gainfully employed;

21 (7) "Retail or service establishment" means an establishment
22 seventy-five percent of whose annual dollar volume of sales of goods
23 or services, or both, is not for resale and is recognized as retail
24 sales or services in the particular industry.

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26 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.16 RCW
27 to read as follows:

28 The department shall adopt rules to provide special workers'
29 compensation risk class or classes for farm interns providing
30 agricultural labor pursuant to a farm internship program. The rules
31 must include any requirements for obtaining a special risk class that
32 must be met by small farms.

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1 **Sec. 4.** A new section is added to chapter 50.04 RCW to read as
2 follows:

3 (1) The term "employment" shall not include service performed in
4 agricultural labor by a farm intern providing his or her services
5 under a farm internship program as established in section 1 of this
6 act.

7 (2) For purposes of this section, "agricultural labor" means:

8 (a) Services performed on a farm, in the employ of any person, in
9 connection with the cultivation of the soil, or in connection with
10 raising or harvesting any agricultural or horticultural commodity,
11 including raising, shearing, feeding, caring for, training, and
12 management of livestock, bees, poultry, and furbearing animals and
13 wild life, or in the employ of the owner or tenant or other operator
14 of a farm in connection with the operation, management, conservation,
15 improvement, or maintenance of such farm and its tools and equipment;

16 (b) Services performed in packing, packaging, grading, storing, or
17 delivering to storage, or to market or to a carrier for transportation
18 to market, any agricultural or horticultural commodity; but only if
19 such service is performed as an incident to ordinary farming
20 operations. The exclusions from the term "employment" provided in
21 this subsection (b) shall not be deemed to be applicable with respect
22 to commercial packing houses, commercial storage establishments,
23 commercial canning, commercial freezing, or any other commercial
24 processing or with respect to services performed in connection with
25 the cultivation, raising, harvesting and processing of oysters or
26 raising and harvesting of mushrooms; or

27 (c) Direct local sales of any agricultural or horticultural
28 commodity after its delivery to a terminal market for distribution or
29 consumption.

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31 NEW SECTION. **Sec. 5.** This act expires December 31, 2011."

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33 Correct the title.

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EFFECT: Changes the authorization to a pilot project for farm internships in San Juan and Skagit Counties until December 1, 2011.

Limits the number of interns a small farm may have to three per year.

Requires as a condition of receiving a special certificate that a farm intern will not displace an experienced worker.

Removes the exemption from the wages, hours, and working conditions provisions of the Industrial Welfare Act.

Requires that an internship program be based on the bona fide curriculum of an educational or vocational institution.

Provides that the Department of Labor and Industries (Department) may revoke a certificate if a farm fails to comply with the Industrial Welfare Act or pay workers' compensation premiums of interns or non-interns. Requires the farm to sign a statement indicating that the farm understands these requirements.

Eliminates rule-making authority except with respect to the special industrial insurance risk class or classes.

Provides that the Department may consult with colleges as well as university departments and extension programs.

Requires the Department to report to the appropriate committees of the Legislature by December 31, 2011 on various matters relating to the pilot project, including:

- The number of farm interns,
- The nature of the educational activities provided to farm interns,
- The wages and other remuneration paid to farm interns;
- The number of and type of workers' compensation claims for farm interns, and
- The employment of farm interns following farm internships.

Makes clarifying changes including specifying that the wages are those authorized by the Department, providing that the intern may be paid the wage specified in the certificate only during the internship, and clarifying the Minimum Wage Act exemption language. Makes technical changes such as correcting grammatical errors.

Provides an expiration date of December 31, 2011.

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